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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/692,995	10/20/2000	Dean F. Jerding	A-6687	8091
5642	7590	07/17/2007	EXAMINER	
SCIENTIFIC-ATLANTA, INC.			BELIVEAU, SCOTT E	
INTELLECTUAL PROPERTY DEPARTMENT			ART UNIT	PAPER NUMBER
5030 SUGARLOAF PARKWAY			2623	
LAWRENCEVILLE, GA 30044				
			NOTIFICATION DATE	DELIVERY MODE
			07/17/2007	ELECTRONIC

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/692,995

Filing Date: October 20, 2000

Appellant(s): JERDING ET AL.

Mr. David Rodack
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 28 March 2007 appealing from the Office action
mailed 08 January 2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The changes are as follows:

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- The FINAL office Action rejected claim 93 under 35 U.S.C. 103(a) as being unpatentable over White et al., in view of Lewis et al., and in further view of Dunn et al.
- The FINAL office Action rejected claims 94, 95, and 101 under 35 U.S.C. 103(a) as being unpatentable over White et al., in view of Lewis et al., and in further view of Wang.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

6,628,302	WHITE et al	9-2003
6,501,902	WANG	12-2002
5,861,906	DUNN et al	1-1999
WO 00/04726 A2	LEWIS et al.	1-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

1. Claims 80, 82, 83, 85, 86, 90-92, and 96-100 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (US Pat No. 6,628,302 B2) in view of Lewis et al. (WO 00/04726 A2).

In consideration of claims 80, the White et al. reference discloses a “method implemented by a television set-top terminal (STT)” [14] coupled via a “bi-directional communication network” [22] to a “server” [12]. The method comprises “receiving via a tuner” [60] in the “STT” [14] a “video presentation provided by the server” [12] “located in a cable television headend” [12] wherein the “video presentation is a video-on-demand presentation” and “outputting by the STT at least a portion of the video presentation as a video-on-demand television signal” [44] (Col 2, Lines 17-32; Col 3, Lines 9-12 and 28-40) responsive to a user request for the delivery/presentation of video-on-demand programming (Col 3, Line 66 – Col 5, Line 27). While the reference teaches that the system is operable to facilitate and control the particular playback of the on-demand presentation from the “server” [12] in association with various video playback commands, the reference is silent with respect to the particular ‘bookmarking’ as claimed.

In an analogous art directed towards television systems, the Lewis reference discloses a method that is described as being applicable to any digital video apparatus that allows for the digital video apparatus to quickly locate a particular data block and begin playback from a selected location (Figure 5; Page 3, Lines 14-21; Page 8, Line 19 – Page 9, Line 10). In particular, the reference discloses “receiving a first user input associated with bookmarking a visual scene contained in [a] video presentation, including receiving a character sequence to be assigned to the visual scene while the video presentation is being presented to the user” (Page 6, Lines 1-10; Page 6, Line 25 – Page 7, Line 5; Page 7, Lines 22-25). The system “stores information related to the visual scene in a memory of the . . . [digital video apparatus] responsive to receiving the first user input, including storing only in the memory

of the [digital video apparatus] information related to the visual scene in response to the receiving the first user input, including storing only in the memory of the STT data corresponding to the character sequence in response to receiving the user input configured to assign the character sequence to the visual scene” (Page 7, Lines 6-11; Page 8, Lines 13-18) and subsequently “outputs . . . at least another portion of the video presentation” in association with the continual playback during/after bookmarking. After the establishment of a bookmarked scene, the method involves “receiving a second user input configured to request . . . the visual scene in the video presentation after the . . . [digital video apparatus] has output at least another portion of the video presentation” whereupon the system “requests”, “receives”, and “outputs . . . a portion of the video presentation starting from a location corresponding to the visual scene responsive to the second user input, wherein the location corresponding to the visual scene is identified by the . . . [digital video apparatus] using the information related to the visual scene, including using information related to the visual scene stored only in the [digital video apparatus]” (Page 6, Lines 1-20; Page 7, Lines 1-5; Page 7, Line 25 – Page 8, Line 13). Accordingly, it would have been obvious to one having ordinary skill in the art to modify the VOD playback system [10] and in particular the digital video apparatus or ‘STT’ [14] of White et al. to “receive a first user input associated with bookmarking a visual scene contained in the video presentation, including receiving a character sequence to be assigned to the visual scene while the video presentation is being presented to the user; storing information related to the visual scene in a memory of the STT responsive to receiving the first user input, including storing only in the memory of the STT information related to the visual scene in response to receiving the first user input, including

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storing only in the memory of the STT data corresponding to the character sequence in response to receiving the user input configured to assign the character sequence to the visual scene; outputting by the STT at least another portion of the video presentation as a video-on-demand television signal; receiving a second user input configured to request from the headend the visual scene in the video presentation after the STT has output the at least another portion of the video presentation; responsive to receiving the second user input, requesting by the STT that the headend send the video presentation beginning from the requested video scene; receiving by the STT from the headend the video presentation beginning from the requested video scene; and outputting by the STT a video-on-demand television signal comprising a portion of the video presentation starting from a location corresponding to the visual scene responsive to the second user input, wherein the location corresponding to the visual scene is identified by the STT using the information related to the visual scene, including using information related to the visual scene stored only in the STT” for the purpose of advantageously providing a method that allows the user to avoid the inconvenience of having to manipulate various keys in order to locate and start playback from a selected location within a video presentation (Lewis et al.: Page 2, Lines 4-14).

Claim 82 is rejected wherein the method further comprises “receiving a plurality of user inputs configured to assign a plurality of respective character sequences corresponding to a plurality of respective visual scenes that were bookmarked responsive to a plurality of respective user inputs” (Lewis et al.: Page 8, Lines 30 – Page 8, Line 5).

Claim 83 is rejected wherein the method further “receives a user input configured to request information related to the visual scene in the video presentation” [128] and

“providing the requested information responsive to receiving the user input configured to request information” (Lewis et al.: Page 6, Line 31 – Page 7, Line 1; Page 8, Line 19 – Page 9, Line 10).

Claims 85 and 86 are rejected wherein the method further comprises “outputting information confirming that the visual scene has been bookmarked wherein the information [includes at least one of a banner and an icon and] overlays a minority portion of a television screen being used to display the video presentation” as illustrated in Figure 4 of Lewis et al.

Claim 90 is rejected wherein the “visual scene is associated with a bookmark list associated with a plurality of visual scenes associated with a plurality of respective user inputs” which served to establish those bookmarks (Lewis et al.: Page 6, Line 25 – Page 7, Line 11; Page 7, Line 30 – Page 8, Line 12).

Claim 91 is rejected wherein the method further comprises “associating a plurality of visual scenes with a plurality of respective bookmark lists associated with a plurality of respective users responsive to a plurality of respective user inputs” (Lewis et al.: Page 6, Line 25 – Page 7, Line 11; Page 7, Line 30 – Page 8, Line 12; Page 8, Lines 25-27).

Claim 92 is rejected wherein the method further comprises “associating a plurality of visual scenes with a plurality of respective bookmark lists associated with a plurality of respective video presentations responsive to a plurality of respective user inputs” (Lewis: Page 7, Line 30 – Page 8, Line 5).

In consideration of claims 96, the White et al. reference discloses a “television set-top terminal” [14] coupled via a “bi-directional communication network” [22] to a “server” [12] “located remotely in a cable television headend” [12]. The “STT” [14] comprises a “tuner”

[60] configured to receive a motion video presentation provided by the server located in the cable television headend” [12] wherein the “video presentation is a video-on-demand presentation”, a “memory” [40], and a “processor” [38] that is “programmed to enable the STT to output at least a portion of the motion video presentation as a video-on-demand television signal” [44] (Col 2, Lines 17-32; Col 3, Lines 9-12 and 28-40) responsive to a user request for the delivery/presentation of video-on-demand programming (Col 3, Line 66 – Col 5, Line 27). While the reference teaches that the system is operable to facilitate and control the particular playback of the on-demand presentation from the “server” [12] in association with various video playback commands, the reference is silent with respect to the particular ‘bookmarking’ as claimed.

In an analogous art directed towards television systems, the Lewis reference discloses a process that is described as being applicable to any digital video apparatus that allows for the digital video apparatus to quickly locate a particular data block and begin playback from a selected location (Figure 5; Page 3, Lines 14-21; Page 8, Line 19 – Page 9, Line 10). In particular, the reference discloses “stor[ing] information related to the visual scene contained in the video presentation only in the memory of the . . . [digital video apparatus] responsive to receiving a first user input associated with the visual scene, without stopping output of the motion video presentation, wherein the first user input includes a character sequence to be assigned to the visual scene, and wherein the information related to the visual scene includes data corresponding to the character sequence” (Page 6, Lines 1-10; Page 6, Line 25 – Page 7, Line 11; Page 7, Lines 22-25; Page 8, Lines 13-18) and subsequently “output[ing] . . . at least another portion of the video presentation” in association with the continual playback

during/after bookmarking. After the establishment of a bookmarked scene, the digital video apparatus “receives a second user input configured to request . . . the visual scene in the video presentation after the . . . [digital video apparatus] has output at least another portion of the video presentation” whereupon the system “requests”, “receives”, and “outputs . . . a portion of the motion video presentation starting from a location corresponding to the visual scene, including using information related to the visual scenes stored only in the [digital video apparatus], wherein the . . . signal comprising the portion of the motion video presentation starting from a location corresponding to the visual scene is output after the at least another portion of the motion video presentation is output as a . . . television signal” (Page 6, Lines 1-20; Page 7, Lines 1-5; Page 7, Line 25 – Page 8, Line 13). Accordingly, it would have been obvious to one having ordinary skill in the art to modify the VOD playback system [10] and in particular the digital video apparatus or ‘STT’ [14] of White et al. to “store information related to a visual scene contained in the motion video presentation only in the memory of the STT responsive to the STT receiving a first user input associated with the visual scene, without stopping output of the motion video presentation, wherein the first user input includes a character sequence to be assigned to the visual scene, and wherein the information related to the visual scene includes data corresponding to the character sequence, output at least another portion of the motion video presentation as a video-on-demand television signal, receive a second user input configured to request from the headend the visual scene in the video presentation after the STT has output the at least another portion of the motion video presentation, responsive to receiving the second user input at the STT, request that the headend send the motion video presentation beginning from the requested

visual scene, receive from the headend the motion video presentation beginning form the requested visual scene, and output responsive to the STT receiving a second user input a video-on-demand television signal comprising a portion of the motion video presentation starting from a location corresponding to the visual scene, including using information related to the visual scene stored only [in] the memory of the STT, wherein the video-on-demand television signal comprising the portion of the motion video presentation starting from a location corresponding to the visual scene is output after the at least another portion of the motion video presentation is output as a video-on-demand television signal” for the purpose of advantageously providing a method that allows the user to avoid the inconvenience of having to manipulate various keys in order to locate and start playback from a selected location within a video presentation (Lewis et al.: Page 2, Lines 4-14).

Claim 97 is rejected wherein the “visual scene is associated with a bookmark list associated with a plurality of visual scenes corresponding to a plurality of respective user inputs” which served to establish those bookmarks (Lewis et al.: Page 6, Line 25 – Page 7, Line 11; Page 7, Line 30 – Page 8, Line 12).

Claim 98 is rejected wherein the “processor is programmed to associate a plurality of visual scenes with a plurality of respective bookmark lists associated with a plurality of respective users responsive to a plurality of respective user inputs” (Lewis et al.: Page 6, Line 25 – Page 7, Line 11; Page 7, Line 30 – Page 8, Line 12; Page 8, Lines 25-27).

Claim 99 is rejected wherein the “processor is programmed to associate a plurality of visual scenes with a plurality of respective bookmark lists associated with a plurality of

respective motion video presentations responsive to a plurality of respective user inputs”

(Lewis et al.: Page 7, Line 30 – Page 8, Line 5).

Claim 100 is rejected wherein the “processor is configured to prompt the user to provide input indicating whether the data is to be deleted from the memory of the STT” (Lewis et al.: Page 7, Lines 1-11).

2. Claim 93 is rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (US Pat No. 6,628,302 B2), in view of Lewis et al. (WO 00/04726 A2), and in further view of Dunn et al. (US Pat No. 5,861,906).

Regarding claim 93, taken in combination, the Lewis et al. reference discloses “prompting the user to provide input indicating whether the information is to be deleted from the memory of the STT” or alternatively allowing for the bookmarks to be saved and later called back up as required by the user (Page 7, Lines 1-11; Page 8, Lines 134-18). The combined references, however, are silent with respect to the particular step being performed ‘after expiration of a rental access period corresponding to the video presentation’. In an analogous art pertaining to television systems, the Dunn et al. reference discloses a method for ordering and processing the rental of a video which ‘expires’ and may subsequently be reordered (Col 11, Lines 37-53). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combined teachings to comprise a ‘expiration of a rental access period’ for the purpose of providing a video-on-demand rental experience that is conveniently organized and familiar to a subscriber (Dunn et al.: Col 1, Lines 39-52). Subsequently, taken in combination, the particular step such that “after expiration of a rental access period corresponding to the video presentation, prompting

the user to provide input indicating whether the information is to be deleted from the memory of the STT" is met such that the user is spared the inconvenience of having to reestablish 'bookmarks' for a given presentation if so desired.

3. Claims 94, 95, and 101 are rejected under 35 U.S.C. 103(a) as being unpatentable over White et al. (US Pat No. 6,628,302 B2), in view of Lewis et al. (WO 00/04726 A2), and in further view of Wang (US Pat No. 6,501,902 B1).

In consideration of claims 94 and 101, the combined references are silent with respect to further "storing an image corresponding to the visual scene in a memory of the STT responsive to the receiving the first user input". In an analogous art pertaining to television systems, the Wang reference discloses "storing an image corresponding to [a] visual scene in a memory . . . responsive to receiving [a] first user input" corresponding to the establishment of a bookmark (Col 3, Lines 31-41). Accordingly, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the combined references to "store an image corresponding to the visual scene in a memory of the STT responsive to the receiving the first user input" for the purpose of provide a method for the user to simply and easily remember a bookmarked video scene (Wang: Col 1, Lines 51-60).

Claim 95 is rejected in light of the combined references wherein "said second user input requesting said visual scene corresponding to a thumbnail image corresponding to the visual scene, said thumbnail image being simultaneously provided with a plurality of thumbnail images corresponding to a plurality of visual scenes in the video presentation" as illustrated in conjunction with Figure 3 of Wang.

(10) Response to Argument

The examiner respectfully disagrees that the rejection should be reversed. Only those arguments having been raised are being considered and addressed in the Examiner's Answer. Any further arguments regarding other elements or limitations not specifically argued or any other reasoning regarding deficiencies in a prima facie case of obviousness that the appellant could have made are considered by the examiner as having been conceded by the appellant for the basis of the decision of this appeal. They are not being addressed by the examiner for the Board's consideration. Should the panel find that the examiner's position/arguments or any aspect of the rejection is not sufficiently clear or a particular issue is of need of further explanation, it is respectfully requested that the case be remanded to the examiner for further explanation prior to the rendering of a decision.¹

I. Discussion of Rejections of claims 80, 82, 83, 85, 86, 90-92, and 96-100 Under 35 U.S.C. 103(a) pertaining to White in view of Lewis.

A. Independent Claim 80

Regarding the rejection of claim 80, appellants assert that a prima facie case of obviousness has not been established because the combination of White and Lewis does not disclose teach or suggest all of the claimed limitations and that one would not have been motivated to combine the references.² Appellant's invention essentially applies known video playback functionality (i.e. 'bookmarking') such as that found in local video playback devices (i.e. DVD players) to other known video playback systems (i.e. video-on-demand).

¹ See 37 CFR 41.50(a)(1) and MPEP 1211.

The examiner recognizes that to establish a *prima facie* case of obviousness, three basic criteria must be met. First, the prior art reference (or references when combined) must teach or suggest all the claim limitations. Second, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Finally, there must be a reasonable expectation of success. It is respectfully presented for the Panel's consideration that a *prima facie* case of obviousness has been established.

In response to appellant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). The rejection of record generally relies upon the teachings of White for establishing a video-on-demand (VOD) architecture. As illustrated in Figure 5, the client terminal or 'set-top terminal' [14] provides a user interface that supports the playback functions (ex. Play, Stop, Rewind, Fast Forward, and Pause) (Col 4, Lines 44-46). The user inputs corresponding to the playback commands are processed by the headend [12] (ex. Col 4, Lines 59-64, Col 4, Line 65 – Col 5, Line 9) whereupon the requested portion of the video presentation is provided. This allows for a subscriber to view and navigate to different portions of a video presentation as desired. Set-top terminal [14] is described as processing digital video and audio data, wherein the data is stored or received in packetized form (ex. MPEG encoded) with location information included therewith (SMPTE code) such that the set-top terminal [14] can quickly locate a

² The question regarding the rejection containing clear legal error was previously raised and found not to be

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particular data block and beginning playback from a selected location (Col 3, Lines 38-39; Col 5, Lines 10-15). Contrary to appellant's broad assertion that no content from a given presentation is delivered by the headend after a pause or stop, it is respectfully noted that the White makes several references to 'resuming playback' (thereby displaying video content after a "pause", "stop", or other interruption) (ex. Col 4, Line 65 – Col 5, Line 9 and Col 5, Lines 16-21). Accordingly, White generally teaches a video-on-demand system in which the client can locally store interruption / resume point information and all of the commands or requests associated with the playback operation are processed by the headend. The reference is silent with respect to the video-on-demand playback functionality including 'bookmarking' and the playback operations associated therewith.

Lewis teaches 'bookmarking' and the corresponding retrieval of 'visual scenes' associated with 'bookmarking'. Specifically, Lewis teaches that 'bookmarking' is an extension of resume functionality such that when the user specifies a bookmark point the system saves the playback point (similar to a pause operation), but unlike a stop / start sequence continues the presentation of the program (Page 6, Lines 7-10; Page 6, Lines 25 – Page 7, Line 5; Page 7, Lines 12-30). The user can further request for the playback from a particular 'bookmark' so as to advantageously providing for a user to avoid the inconvenience of having to manipulate various keys in order to locate and start playback from a selected location within a video presentation (Page 2, Lines 4-14). Lewis et al. therefore provides evidence as to delivering a video presentation both during and after bookmarking as claimed. While Lewis does not make any explicit references to VOD

systems or networks, as argued by appellant, it is clear to those skilled in the art that the teachings of Lewis are not limited to the exemplary embodiment but may be employed in any digital video apparatus. It is respectfully noted for the panel's review that the reference explicitly discloses that its teachings may be used in any digital video apparatus capable of processing digital video (Page 3, Lines 14-21). As previously noted, the set top-terminal [14] of White is a digital video apparatus for which the teachings of Lewis apply. Both Lewis and White support video playback operations from optical media (DVD vs. 'generic' optical storage) (White et al.: Col 2, Lines 22-24). White et al., similar to the application, discloses that 'information related to a visual scene' such as timing information can be stored anywhere within the system architecture including the claimed "STT" (Instant Application (IA): Page 15, Lines 10-14; White et al.: Col 5, Lines 10-14), thereby suggesting that the particular location of storage of the bookmarking is nominal to the invention. The examiner subsequently concluded that it would have been obvious to modify the White VOD system and its playback functionality (ex. Play, Stop, Rewind, Fast Forward, Resume, and Pause) to be supplemented with the 'bookmarking' functionality of Lewis so as to spare a user of the White video-on-demand system of the inconvenience of having to manipulate various keys in order to locate and start playback from a selected location within a video presentation. Accordingly, taken in combination, the teachings rely on the VOD video distribution architecture White with its local storage of resume information having been modified to provide the supplemental playback functionality of Lewis so as to disclose, teach, and/or suggest all of the claimed limitations.

In response to applicant's argument that it would not have been obvious to combine White and Lewis, the examiner respectfully disagrees. In describing the 'bookmarking', the application states:

"Using fast forward and rewind features to access the more desired portions of a video presentation are inconvenient and time consuming. Therefore, there exists a need to provide users with means for easily and conveniently access portions of video presentations that users desire" (IA: Page 2, Lines 4)

Lewis states that:

"The user also may wish to avoid the inconvenience of manipulating the fast forward or reverse commands to reach the precise point desired. . . It can be seen that locating each of the desired points during playback can quickly become cumbersome and annoying. Therefore, what is need is a user interface, apparatus and method which allows the user to avoid the inconvenience of having to manipulate the various transport keys in order to locate and start playback from a selected location within a video title or chapter . . ." (Lewis: Page 2, Lines 4-14).

Both White and Lewis are analogous art in that both relate to the field television systems. Lewis is also analogous because it is reasonably pertinent to the problem being solved, namely the selection of a particular portion of video for playback without having to rewind / fast-forward through the presentation. There is also a suggestion or motivation, in the references to modify the reference or to combine the reference teachings (Lewis et al.: Page 2, Lines 4-14; Page 3, Lines 14-21). Therefore, the second criteria for establishing a prima facie case of obviousness has been met.

Finally, with respect to there existing a reasonable expectation of success, appellant argues that it would not have been reasonable to combine the teachings of White and Lewis because there is considerable complexity involved in bookmarking content from the headend of the VOD network. Appellant, however, provides none of the necessary evidence of

secondary considerations supporting why the fact that purported considerable complexity would dissuade one having ordinary skill in the art due to the combination simply by virtue of being too complex.³ As previously noted and applied in previous grounds of rejection, the concept of implementing bookmarking playback functionality in a video-on-demand system is not too complex but is within the ordinary skill in the art as evidenced by Budow (US Pat No. 5,625,864) and Goode et al. (US Pat No. 6,166,730) (see Non-Final Rejection, mailed 05 December 2003). Given the predictable nature of the video distribution art as well as the concept of implementing ‘bookmarking’ functionality in video-on-demand systems being within the ordinary skill in the art, it is the examiner’s opinion that there would have existed a reasonable expectation of success.

It is respectfully submitted that a prima facie case of obviousness has in fact been established and the rejection should be sustained.

B. Independent Claim 96

No additional arguments are presented over and above those previously addressed. Accordingly, the rejection is believed proper for the previously addressed reasoning.

II. Discussion of Rejections of claims 93-95 and 101 Under 35 U.S.C. 103(a) pertaining to White, in view of Lewis, and in further view of Wang.⁴

A. Dependent Claim 93

³ The arguments of counsel cannot take the place of evidence in the record. In re Schulze, 346 F.2d 600, 602, 145 USPQ 716, 718 (CCPA 1965).

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No additional arguments other than those related to the claim being dependent upon a purported allowable claim are presented. Accordingly, the rejection is still believed proper for the reasons previously set forth.

B. Dependent Claim 94

No additional arguments other than those related to the claim being dependent upon a purported allowable claim are presented. Accordingly, the rejection is still believed proper for the reasons previously set forth.

C. Dependent Claim 95

No additional arguments other than those related to the claim being dependent upon a purported allowable claim are presented. Accordingly, the rejection is still believed proper for the reasons previously set forth.

D. Dependent Claim 101

No additional arguments other than those related to the claim being dependent upon a purported allowable claim are presented. Accordingly, the rejection is still believed proper for the reasons previously set forth.

(11) Related Proceeding(s) Appendix

⁴ It is respectfully noted that the rejection of record for claim 93 relies upon Dunn et al. as opposed to the noted Wang. This is being treated as a typographical error as the thrust of the appellant's arguments for the dependent claim would remain unaffected if the proper reference had been noted.

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No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

SEB

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